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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re A. W. et al., Persons Coming
Under the Juvenile Court Law.

B292128
(Los Angeles County
Super. Ct. No. 18CCJP03423A-C

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

J.W.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Frank J. Menetrez, Judge. Affirmed.

Judy Weissberg-Ortiz, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, Jeanette Cauble, Principal Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Appellant James W. (Father) brings this appeal challenging jurisdictional findings and dispositional orders based on alleged noncompliance with the notice provisions of the Indian Child Welfare Act of 1978 (ICWA; 25 U.S.C. § 1901 et seq.) The Los Angeles County Department of Children and Family Services (the Department) argues ICWA does not apply to cases such as this one, where the juvenile court never considers placing the children in foster care or an adoptive home. We agree with the Department and affirm the order.

FACTS AND PROCEDURAL BACKGROUND

The Department filed a petition under Welfare and Institutions Code section 300¹ on behalf of Father's three children: Abraham, Nathan and Alexander. The petition alleged Father physically abused Nathan and placed the other two children at substantial risk of harm. The petition also alleged Father's history of substance abuse placed the children at risk. Father and Mother had a 50/50 custody order in place when the petition was filed.²

At the detention hearing, Father indicated possible Indian ancestry. In response, the juvenile court directed the Department to investigate Father's claim and give notice under

¹ All further statutory references are to the Welfare and Institutions Code.

² We grant the Department's request that we take judicial notice of the final judgment filed on March 19, 2019, which includes the custody and visitation orders.

ICWA if applicable. The children were ordered released to the home of the mother.

At the August 15, 2018 disposition hearing, the juvenile court ordered the children placed in the home of mother under the Department's supervision with enhancement services provided to Father. Father appealed.

DISCUSSION

Father contends we must reverse the juvenile court's jurisdictional findings³ and dispositional order because the Department did not comply with ICWA. However, the Department counters we need not reverse since ICWA does not apply. Father did not submit a reply brief.

ICWA requirements were incorporated into California's statutes through section 361. (*In re J.B.* (2009) 178 Cal.App.4th 751, 756.) Under section 361, the Department is required to make an "active effort" to "maintain or reunite an Indian child with his or her family" when it knows or has "reason to know the child is an Indian child." (§§ 361, 224.1.)

ICWA applies to a "proceeding for temporary or long-term foster care or guardianship placement, termination of parental rights, preadoptive placement after termination of parental rights, or adoptive placement." (*In re M.R.* (2017) 7 Cal.App.5th 886, 904.) But ICWA does not apply to a proceeding where the child is placed with a parent, as is the case here. (*Ibid.*) "If the

3 Father alleges the juvenile court erred in its jurisdictional findings; however, he does not make any argument in his brief to support his claim. Failure to support an argument with discussion or citation to authority results in forfeiture. (*In re S.C.* (2016) 138 Cal.4th 396, 408.)

Legislature intended to include placement with a parent, . . . it would have expressly done so by adding it to the list” of proceedings included in Section 224.1, subdivision (c). (*In re J.B., supra*, 178 Cal.App.4th 751, 758.) Thus, ICWA is not intended to apply to removal of children from one parent and placement with another parent. (*Ibid.*)

The matter before us parallels the facts in *In re J.B., supra*, 178 Cal.App.4th 751. There, the children were taken from mother and placed in the custody of father. (*Id* at p. 755.) The juvenile court held ICWA did not apply because the children were ordered to the home of a parent instead of foster care or adoption. (*Id* at pp. 759-760.)

“[T]he legislative intent behind ICWA expressly focuses on the removal of Indian children from their *homes and parents*, and placement in *foster or adoptive homes*.” (*In re J.B., supra*, 178 Cal. App. 4th 751, 759.) In the case before us, there are no orders placing the children in an adoptive home or in foster care. Rather, the children were “removed from [father’s] custody and released to the home of mother.”

Because the child custody proceeding is not subject to ICWA, the Department was not required to comply with ICWA’s notice requirements. (*In re Alexis H.* (2005) 132 Cal.App.4th 11.) While the juvenile court did request the Department to investigate the ICWA claim, the children were never removed from mother. Therefore, notice was not required.

Father asserts ICWA applies because the children were at risk of entering foster care. However, father provides no record support for this allegation. The appellate court does not have an obligation to “search the record” to support appellant’s argument.

(*Yield Dynamics, Inc. v. TEA Systems Corp.*, 154 Cal. App. 4th 547, 557.)

Furthermore, the cases cited by father are distinguishable because—in those cases—the children were removed from their parents’ custody and were eligible for adoption or placed in foster care. (*In re S.M.* (2004) 118 Cal.App.4th 1108 [father’s rights terminated and minor found to be adoptable]; *In re C.D.* (2003) 110 Cal.App.4th 214 [children placed in foster care]; *In re Kahlen W.* (1991) 233 Cal.App.3d 1414 [child placed in “fost-adopt” home]; *In re Jennifer A.* (2002) 103 Cal.App.4th 692 [child removed from mother and placed in foster care prior to her placement with father]; *In re Samuel P.* (2002) 99 Cal.App.4th 1259 [children placed in foster care]; (*In re Desiree F.* (2000) 83 Cal.App.4th 460 [child placed in foster care].) In all of father’s cited cases, ICWA notice requirements were triggered because the child was ordered placed either in foster care or pre-adoptive homes. Thus, they are unlike this case, where the children were placed with one biological parent.

CONCLUSION

The dispositional order placing the children with mother and granting father enhancement services is affirmed. Because the children remained with one biological parent, and were not placed into foster or adoptive placement, ICWA notice was not required.

DISPOSITION

The juvenile court order is affirmed.

CURREY, J.

WE CONCUR:

MANELLA, P. J.

COLLINS, J.